U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: OCT 21 2013 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The petitioner appealed that decision, and the AAO dismissed the petitioner's appeal. The matter is now before the AAO again on appeal. The AAO will reject the appeal.

The petitioner filed the File I-140 petition on December 23, 2011, seeking classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the sciences. The petitioner seeks employment as a traffic engineer for the City of Arlington, Texas. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. In denying the petition on December 5, 2012, the director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States. The petitioner appealed the decision on January 7, 2013.

The AAO dismissed the appeal on April 8, 2013. The cover sheet on the appellate decision indicated that the petitioner could file a motion to reopen and/or reconsider the decision, but did not indicate that the petitioner had any appeal rights.

The petitioner filed Form I-290B, Notice of Appeal or Motion, on May 7, 2013. Asked to specify (by checking a box) whether the filing was an appeal or a motion, counsel indicated that the filing was an appeal. Elsewhere on Form I-290B and in an accompanying statement, counsel refers to the filing only as an appeal.

The AAO does not exercise appellate jurisdiction over its own decisions. The AAO exercises appellate jurisdiction over only the matters described in the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). *See* DHS Delegation Number 0150.1 (effective March 1, 2003). An appeal of an AAO appeal is not properly within the AAO's jurisdiction.

There is no provision for a petitioner to appeal the dismissal of an appeal. The AAO must therefore reject the appeal.

In the alternative, if the petitioner had intended the latest filing as a motion, the AAO would dismiss the motion. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

In the latest filing, counsel states no new facts and the petitioner submits no new evidence. Numerous exhibits accompany the filing, but the documents are all copies of previously submitted materials. Therefore, the latest filing does not meet the requirements of a motion to reopen.

The brief accompanying the latest filing does not establish that the AAO's decision was based on an incorrect application of law or USCIS policy, and it does not establish that the AAO's decision was incorrect based on the evidence of record at the time of the initial decision. Instead, the brief repeats, word for word, the first eight pages of the brief that had accompanied the petitioner's first appeal in January 2013. The AAO fully addressed that brief, and the accompanying evidence, in its first appellate decision.

A motion to reconsider is not a process by which a party may submit the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. *See Matter of Medrano*, 20 I&N Dec. 216, 219 (BIA 1990, 1991). The petitioner has not done so. Instead, the petitioner has submitted part of the same brief and copies of the same evidence, with no explanation as to why the AAO's previous decision was incorrect. Therefore, the petitioner's submission would not qualify as a motion to reconsider under the regulation at 8 C.F.R. § 103.5(a)(3). The regulation at 8 C.F.R. § 103.5(a)(4) requires the dismissal of a motion that does not meet the requirements of a motion to reopen or a motion to reconsider.

There is no provision to allow the petitioner to appeal the dismissal of an earlier appeal. The AAO will reject the appeal.

ORDER: The appeal is rejected.